



Interoffice Memorandum

AGENDA ITEM

February 7, 2020

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director
Planning, Environmental, and Development
Services Department

CONTACT PERSON: **David Jones, P.E., CEP, Manager
Environmental Protection Division
(407) 836-1406**

SUBJECT: March 10, 2020 — Consent Item
Environmental Protection Commission Recommendation for
Request for Waiver and Variance for David Mikush Dock
Construction Permit BD-19-12-135

The applicant, David Mikush, is requesting approval of a waiver to Orange County Code (Code), Chapter 15, Article IX, Section 15-342(b) (terminal platform size) and a variance to Section 15-343(a) (side setback). The project site is located at 14210 Bridgewater Crossings Boulevard, Windermere, Florida 34786. The Parcel ID number is 15-23-27-1540-00-950. The subject property is located on Lake Speer in District 1.

On December 2, 2019, the Environmental Protection Division (EPD) received an Application to Construct a Dock at the subject property. Included with the application was a waiver request to increase the terminal platform size to a total of 568 square feet and a variance request to reduce the side setback to six feet from both projected property lines.

Terminal Platform Size Waiver

Chapter 15, Article IX, Section 15-342(b) of the Code states, "the maximum square footage of the terminal platform shall not exceed the square footage of 10 times the linear shoreline frontage for the first 75 feet of shoreline and five times the linear shoreline frontage for each foot in excess of 75 feet, not to exceed a maximum of 1,000 square feet." The applicant has a shoreline that measures approximately 51.12 linear feet at the Normal High Water Elevation (NHWE), allowing for a maximum terminal platform size of 511.2 square feet. The applicant is requesting a terminal platform of 568 square feet (56.8 square feet larger than allowed).

Pursuant to Section 15-350(a)(2), "the applicant shall describe (1) how this waiver would not negatively impact the environment, and (2) the effect of the proposed waiver on abutting shoreline owners."

To address Section 15-350(a)(2)(1), the applicant's agent (Sheila Cichra) states, "*The terminal platform will be constructed over open water, so there will not be any impact to wetland vegetation. The proposed terminal platform is only 57 square feet over the allowed limit.*"

To address Section 15-350(a)(2)(2), the applicant's agent states, "*The proposed structure will not adversely affect the adjacent property owner's view or navigability. Letters of No Objection (LONOs) from both neighbors are included.*"

EPD received LONO from the adjacent property owners Amanda and Jeff Felbab at 14204 Bridgewater Crossings Boulevard, and Chad and Wendy Cooper at 14216 Bridgewater Crossings Boulevard. They stated that they had no objections to the reduced side setback. The additional shading impacts from the larger-than-allowed terminal platform were evaluated by EPD staff using the Uniform Mitigation Assessment Method. The applicant has agreed to provide mitigation for the additional shading with a payment of \$351 to the Conservation Trust Fund.

Side Setback Variance

Chapter 15, Article IX, Section 15-343(a) of the Code states, "On lots or parcels having a shoreline frontage of less than 75 feet, docks, including designated mooring areas, shall have a minimum side-setback of 10 feet from the projected property line." The applicant has a shoreline that measures 51.12 linear feet at the NHWE, requiring a minimum side setback of 10 feet. However, there is a substantially wide wetland fringe along this portion of the lake and the lot narrows to just 37 feet wide in the location proposed for the dock. The applicant is requesting a side setback of six feet on both sides (a reduction of four feet on either side).

Section 15-350(a)(1) *Variances* states, "A variance application may receive an approval or approval with conditions when such variance: (1) would not be contrary to the public interest; (2) where, owing to special conditions, compliance with the provisions herein would impose an unnecessary hardship on the permit applicant; (3) that the hardship is not self-imposed; and (4) the granting of the variance would not be contrary to the intent and purpose of this article."

Pursuant to Section 15-350(a)(1), "the applicant shall also describe (1) how strict compliance with the provisions from which a variance is sought would impose a unique and unnecessary hardship on the applicant-the hardship cannot be self-imposed; and (2) the effect of the proposed variance on abutting shoreline owners."

To address Section 15-350(a)(1)(1), the applicant's agent states, "*These parcels were platted with very narrow shorelines. It is difficult to construct even a below average sized boathouse within the required setbacks. A standard boathouse, for this builder, is 13' wide (11' wide slip and 2' catwalk) and a standard sized deck is 12' wide. It's such a long way from the main house, the deck area needs to be of a decent size to be usable.*"

To address Section 15-350(a)(1)(2), the applicant's agent states, "*Due to the angled property lines and the similarity of all of the lots in this area, there is no navigational hazard or view obstruction, as evidenced by the LONOs.*"

Objections

Notifications of the application for waiver and variance were sent to all shoreline property owners within 300 feet of the property. On December 19, 2019, EPD received a written objection to the reduced side setbacks and increased terminal platform size by Amy and Richard Lerner, property owners of 5522 Remsen Cay Lane. In their objection letter, the Lerner's state:

"We would object to the granting of this variance. The neighborhood is very orderly with side setbacks being equal and this gives a sense of space and privacy...We would be strongly against both this and the request for a larger terminal platform size. The scale of other docks in the area would be dwarfed and it would be directly in our line of sight so blocking the view more than legally allowed would impact our enjoyment of our home."

There are a total of seven properties located on Bridgewater Crossings Boulevard along Lake Speer; four of them have docks that were recently (since 2007) permitted by EPD. All four docks were granted either a variance to Section 15-343(a), a waiver to Section 15-342(b), or both (see attached Exhibit 2 prepared by staff).

Additionally, Exhibit 3 (prepared by staff) is a depiction of the docks along Bridgewater Crossings Boulevard on Lake Speer with approximations of the distances between the existing docks and the proposed dock based on the approved side setbacks and terminal platform sizes.

Staff and Environmental Protection Commission (EPC) Recommendations

Staff evaluated the request for compliance with the Code criteria. The recommendation of the Environmental Protection Officer (EPO) was to deny the waiver and variance based on a finding that the applicant has not demonstrated that there will be no effect from the proposed waiver and variance on abutting shoreline owners pursuant to Section 15-350(a)(2)(2) and Section 15-350(a)(1), respectively, as the Lerner's have submitted an objection.

At the EPC hearing, EPD gave a detailed presentation that included records of previously approved variances and waivers for neighboring docks, an estimation of the distances between those docks, and an aerial depicting the distance between the applicant's and objectors' properties. The EPC commented that the objectors were located several lots away and this proposed dock would not have an impact on their viewshed. The EPC's decision was also based on the fact that LONOs were received from both adjacent property owners and that the proposed dock is comparable to neighboring docks, all of which had been approved for similar waivers and variances. The EPC also commented that the objectors did not show up at the hearing to make the case for their objection.

Based upon evidence and testimony presented at the January 29, 2020 EPC public hearing, the EPC voted to reject the findings and recommendations of the EPO and made a recommendation to approve the request for waiver and variance, with the condition that the applicant pay \$351 to the Conservation Trust Fund in order to offset the negative environmental effects due to shading of the oversized terminal platform.

Page Four

March 10, 2020 – Consent Item

Environmental Protection Commission Recommendation for Request for Waiver and Variance for David Mikush Dock Construction Permit BD-19-12-135

ACTION REQUESTED: Accept the findings and recommendations of the Environmental Protection Commission and approve the request for waiver to Orange County Code, Chapter 15, Article IX, Section 15-342(b) to increase the allowable terminal platform size from 511 to 568 square feet with the condition that the applicant pay \$351 to the Conservation Trust Fund within 60 days of the decision of the Board, and approve the request for variance to Section 15-343(a) to reduce the side setback from both projected property lines from 10 feet to 6 feet for the David Mikush Dock Construction Permit BD 19-12-135. District 1

JVW/DDJ: mg

Attachments



ENVIRONMENTAL PROTECTION DIVISION

David D. Jones, P.E., CEP, Manager

3165 McCrory Place, Suite 200
Orlando, FL 32803
407-836-1400 • Fax 407-836-1499
www.ocfl.net

ENVIRONMENTAL PROTECTION COMMISSION

ORANGE COUNTY ENVIRONMENTAL PROTECTION COMMISSION
January 29, 2020

Jonathan Huels
Chairman

Mark Ausley
Vice Chairman

Oscar Anderson

Perry Barnas

Florman Blackburn

Billy Butterfield

Mark Corbett

PROJECT NAME: David Mikush
PERMIT APPLICATION NUMBER: BD-19-12-135
LOCATION/ADDRESS: 14210 Bridgewater Crossings Boulevard, Windermere

RECOMMENDATION: Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(b), accept the findings and recommendations of the Environmental Protection Officer and make a finding that the waiver request is inconsistent with Section 15-350(a)(2), and recommend denial of the request for waiver to Section 15-342(b) to increase the allowable terminal platform size from 511 square feet to 568 square feet, and make a finding that the variance request is inconsistent with Section 15-350(a)(1), and recommend denial of the request for variance to Section 15-343(a) to reduce the side setback from both projected property lines from 10 feet to 6 feet for the Mikush Dock Construction Permit BD-19-12-135. District 1.

Deloitte
approval

and require a payment of \$3500 to the CTF

[] EPC AGREES WITH THE ACTION REQUESTED, AS PRESENTED

[X] EPC DISAGREES WITH THE ACTION REQUESTED, AS PRESENTED AND HAS MADE THE FOLLOWING RECOMMENDATION:

see above edits

Signature of EPC Chairman: [Signature]

DATE EPC RECOMMENDATION RENDERED: 1/29/20

Dock Construction Application for Variance and Waiver



**Dock Construction Application
for Waiver and Variance
BD-19-12-135
District #1**

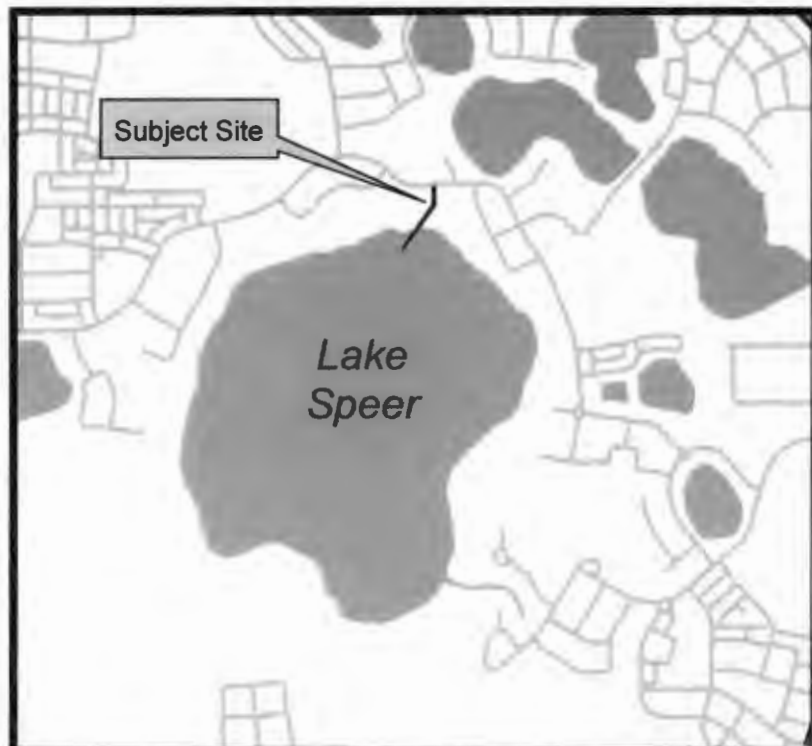
Applicant: David Mikush

Address: 14210 Bridgewater
Crossings Blvd.

Parcel ID: 15-23-27-1540-00-950

Project Site 

Property Location 





Interoffice Memorandum

January 10, 2020

To: Environmental Protection Commission

From: David D. Jones, P.E., CEP, Manager
Environmental Protection Division

Subject: **David Mikush Request for Waiver and Variance for Dock Construction Permit BD-19-12-135**

Reason for Public Hearing

The applicant, David Mikush, is requesting approval of a waiver to Orange County Code (Code), Chapter 15, Article IX, Section 15-342(b) (terminal platform size) and a variance to Chapter 15, Article IX, Section 15-343(a) (side setback).

Location of Property/Legal Description

The project site is located at 14210 Bridgewater Crossings Boulevard, Windermere, Florida 34786. The Parcel ID number is 15-23-27-1540-00-950. The subject property is located on Lake Speer in District 1.

Background

On December 2, 2019, the Environmental Protection Division (EPD) received an Application to Construct a Dock at the subject property.

Included with the application was an Application for Waiver to Section 15-342(b) to increase the terminal platform size to a total of 568 square feet and an Application for variance to Section 15-343(a) to reduce the side setback to six feet from both projected property lines.

Public Notifications

On December 10, 2019, a Notice of Applications for Waiver and Variance was sent to all property owners within a 300-foot radius of the property.

Terminal Platform Size Waiver

Chapter 15, Article IX, Section 15-342(b) of the Code states, "the maximum square footage of the terminal platform shall not exceed the square footage of ten times the linear shoreline frontage for the first seventy-five (75) feet of shoreline and five times the linear shoreline frontage for each foot in excess of seventy-five (75) feet, not to exceed a maximum of 1,000 square feet." The applicant has a shoreline that measures approximately 51.12 linear feet at the Normal High Water Elevation (NHWE), allowing for a maximum terminal platform size of 511.2 square feet. The applicant is requesting a terminal platform of 568 square feet (56.8 square feet larger than allowed).

Pursuant to Section 15-350(a)(2), "the applicant shall describe (1) how this waiver would not negatively impact the environment, and (2) the effect of the proposed waiver on abutting shoreline owners."

To address Section 15-350(a)(2)(1), the applicant's agent (Sheila Cichra) states, "*The terminal platform will be constructed over open water, so there will not be any impact to wetland vegetation. The proposed terminal platform is only 57 square feet over the allowed limit.*"

To address Section 15-350(a)(2)(2), the applicant's agent states, "*The proposed structure will not adversely affect the adjacent property owner's view or navigability. LONOs from both neighbors are attached.*"

EPD received Letters of No Objection (LONO's) from the adjacent property owners Amanda and Jeff Felbab at 14204 Bridgewater Crossings Boulevard, and Chad and Wendy Cooper at 14216 Bridgewater Crossings Boulevard. They stated that they had no objections to the reduced side setback. The additional shading impacts from the larger-than-allowed terminal platform were evaluated by EPD staff using the Uniform Mitigation Assessment Method. The applicant has agreed to provide mitigation for the additional shading with a payment of \$351 to the Conservation Trust Fund.

Side Setback Variance

Chapter 15, Article IX, Section 15-343(a) of the Code states, "On lots or parcels having a shoreline frontage of less than seventy-five (75) feet, docks, including designated mooring areas, shall have a minimum side-setback of ten (10) feet from the projected property line." The applicant has a shoreline that measures 51.12 linear feet at the NHWE, requiring a minimum side setback of 10 feet. However, there is a substantially wide wetland fringe along this portion of the lake and the lot narrows to just 37 feet wide in the location proposed for the dock. The applicant is requesting a side setback of six feet on both sides (a reduction of four feet on either side).

Section 15-350(a)(1) *Variances* states, "A variance application may receive an approval or approval with conditions when such variance: (1) would not be contrary to the public interest; (2) where, owing to special conditions, compliance with the provisions herein would impose an unnecessary hardship on the permit applicant; (3) that the hardship is not self-imposed; and (4) the granting of the variance would not be contrary to the intent and purpose of this article."

Pursuant to Section 15-350(a)(1), "the applicant shall also describe (1) how strict compliance with the provisions from which a variance is sought would impose a unique and unnecessary hardship on the applicant-the hardship cannot be self-imposed; and (2) the effect of the proposed variance on abutting shoreline owners."

To address Section 15-350(a)(1)(1), the applicant's agent states, "*These parcels were platted with very narrow shorelines. It is difficult to construct even a below average sized boathouse within the required setbacks. A standard boathouse, for this builder, is 13' wide (11' wide slip and 2' catwalk) and a standard sized deck is 12' wide. It's such a long way from the main house, the deck area needs to be of a decent size to be usable.*"

To address Section 15-350(a)(1)(2), the applicant's agent states, "*Due to the angled property lines and the similarity of all of the lots in this area, there is no navigational hazard or view obstruction, as evidenced by the attached LONOs.*"

Objections

On December 19, 2019, EPD received a written objection to the reduced side setback and increased terminal platform size by Amy and Richard Lerner, property owners of 5522 Remsen Cay Lane. In their objection letter, the Lerner's state:

“We would object to the granting of this variance. The neighborhood is very orderly with side setbacks being equal and this gives a sense of space and privacy... We would be strongly against both this and the request for a larger terminal platform size. The scale of other docks in the area would be dwarfed and it would be directly in our line of sight so blocking the view more than legally allowed would impact our enjoyment of our home.”

In response to this objection, staff reached out to the objector, but has yet to receive a response. Exhibit 1 (prepared by staff) depicts the locations of the applicant’s and objector’s parcels.

There are a total of seven properties located on Bridgewater Crossings Boulevard along Lake Speer; four of them have docks that were recently (since 2007) permitted by EPD. All four docks were granted either a variance to Section 15-343(a), a waiver to Section 15-342(b), or both (see attached Exhibit 2 prepared by staff).

Additionally, Exhibit 3 (prepared by staff) is a depiction of the docks along Bridgewater Crossings Boulevard on Lake Speer with approximations of the distances between the existing docks and the proposed dock based on the approved side setbacks and terminal platform sizes.

Enforcement Action

There is no current enforcement action for this property.

Staff Recommendation

Staff has evaluated the waiver request for compliance with the criteria for approval. The recommendation of the Environmental Protection Officer (EPO) is to deny the waiver to Section 15-342(b) (terminal platform size) based on a finding that the applicant has failed to demonstrate there will be no effect from the proposed waiver on abutting shoreline owners pursuant to Section 15-350(a)(2)(2) as a neighboring property owner has submitted an objection to the request. However, should the Environmental Protection Commission recommend approval of the waiver, the applicant has agreed to provide mitigation for the additional shading with a payment of \$351 to the Conservation Trust Fund.

Staff has evaluated the variance request for compliance with the criteria for approval. The recommendation of the EPO is to deny the request for variance based on a finding that the applicant has failed to demonstrate that they have met the requirements of Section 15-350(a)(1), as a neighboring property owner has submitted an objection to the request.

ACTION REQUESTED: Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(b), accept the findings and recommendations of the Environmental Protection Officer and make a finding that the waiver request is inconsistent with Section 15-350(a)(2), and recommend denial of the request for waiver to Section 15-342(b) to increase the allowable terminal platform size from 511 square feet to 568 square feet, and make a finding that the variance request is inconsistent with Section 15-350(a)(1), and recommend denial of the request for variance to Section 15-343(a) to reduce the side setback from both projected property lines from 10 feet to 6 feet for the Mikush Dock Construction Permit BD-19-12-135. District 1.

NS/NT/TMH/ERJ/DJ: mg

Attachments

Exhibit 1.

Aerial Image of Northeast Corner of Lake Speer



Yellow = Applicant
Red = Objector

Exhibit 2.

Docks Currently Permitted on Bridgewater Crossings Boulevard (Lake Speer)

Address	Year permitted	TP ¹ Size Allowed per Code ² (in square feet)	Permitted TP ¹ size (in square feet)	Side Setbacks Allowed per Code ² (in feet)	Permitted Side Setbacks (in feet)
14216 Bridgewater Crossings Blvd	2007	542	486	10, 10	10, -5
14192 Bridgewater Crossings Boulevard	2016	340	504	10, 10	2, 2
14198 Bridgewater Crossings Boulevard	2017	690	797	10, 10	6, 6
14204 Bridgewater Crossings Boulevard	2019	377	504	10, 10	6, 6

¹TP = Terminal Platform

²Code = Article IX, Orange County Construction of Dock Ordinance

Exhibit 3.

Estimated Distances Between Docks on Bridgewater Crossings Boulevard on Lake Speer



Blue lines = Property Lines
Yellow lines = Mikush Parcel
Gray = Felbab dock that was recently constructed, not on current aerials
White = Mikush dock, proposed

LOT 95
EDEN'S HAMMOCK

ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 62 ON
 PAGES 134 THROUGH 143 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

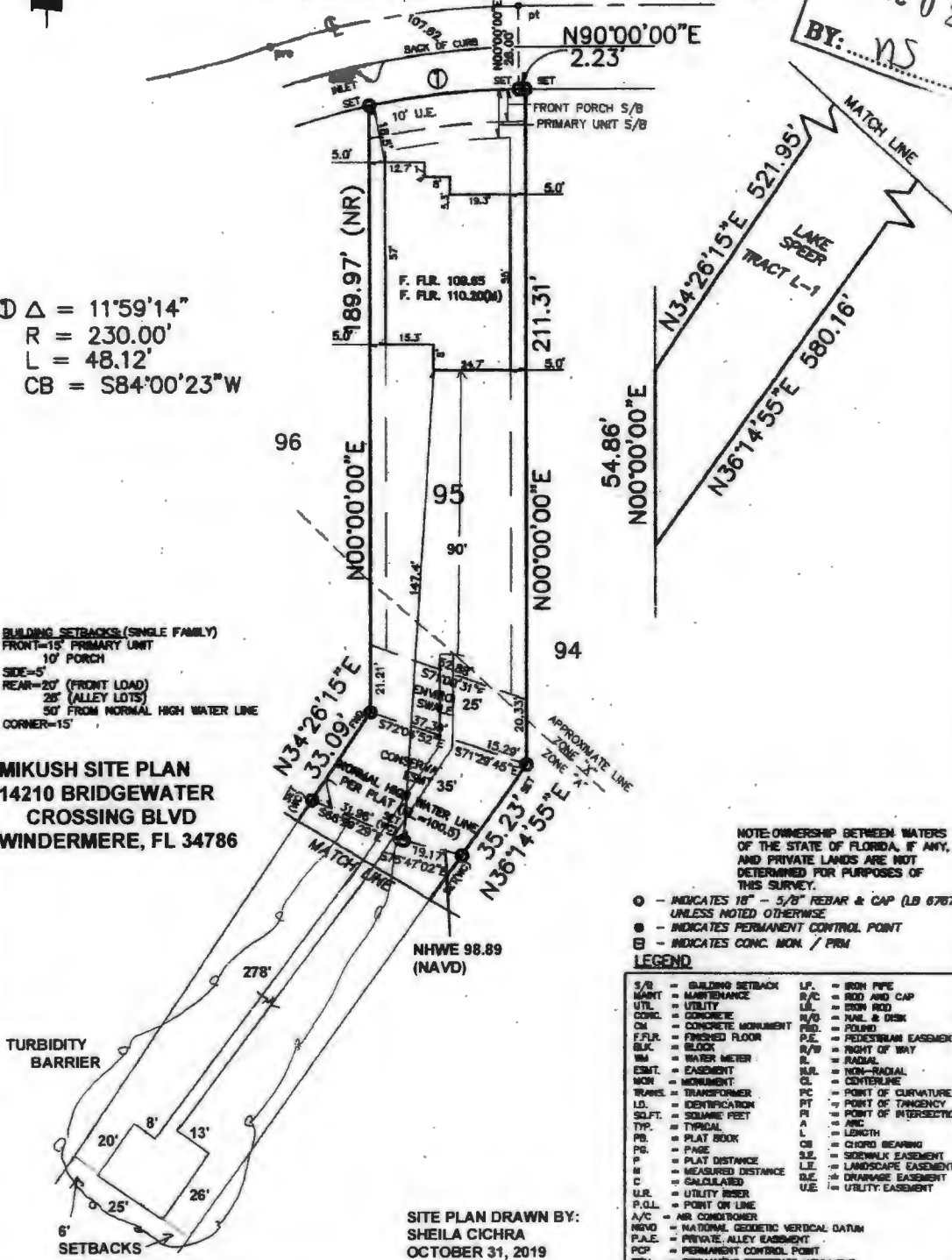
BRIDGEWATER CROSSINGS BOULEVARD

RECEIVED
 DEC 02 2019
 BY: NS

① Δ = 11°59'14"
 R = 230.00'
 L = 48.12'
 CB = S84°00'23"W

BUILDING SETBACKS (SINGLE FAMILY)
 FRONT-15' PRIMARY UNIT
 10' PORCH
 SIDE-5'
 REAR-20' (FRONT LOAD)
 25' (ALLEY LOTS)
 50' FROM NORMAL HIGH WATER LINE
 CORNER-15'

MIKUSH SITE PLAN
 14210 BRIDGEWATER
 CROSSING BLVD
 WINDERMERE, FL 34786



NOTE: OWNERSHIP BETWEEN WATERS OF THE STATE OF FLORIDA, IF ANY, AND PRIVATE LANDS ARE NOT DETERMINED FOR PURPOSES OF THIS SURVEY.

- - INDICATES 18" - 5/8" REBAR & CAP (LB 6767) UNLESS NOTED OTHERWISE
- - INDICATES PERMANENT CONTROL POINT
- ⊞ - INDICATES CONC. MON. / PRM

LEGEND

S/B - BUILDING SETBACK	UF - IRON PIPE
MANT - MAINTENANCE	R/C - ROD AND CAP
UTIL - UTILITY	UL - IRON ROD
CONC. - CONCRETE	R/D - RAIL & DRK
CM - CONCRETE MONUMENT	POW - POWD
F.F.L.R. - FINISHED FLOOR	P.E. - PEDESTRIAN EASEMENT
BLK - BLOCK	R/W - RIGHT OF WAY
WM - WATER METER	R - RADIAL
EASMT. - EASEMENT	N.R. - NON-RADIAL CENTERLINE
MON - MONUMENT	PC - POINT OF CURVATURE
TRANS - TRANSFORMER	PT - POINT OF TANGENCY
LD. - IDENTIFICATION	PI - POINT OF INTERSECTION
SQ.FT. - SQUARE FEET	PI - POINT OF INTERSECTION
TRF. - TYPICAL	A - ARC
PL. - PLAT BOOK	L - LENGTH
PG. - PAGE	CB - CHORD BEARING
P - PLAT DISTANCE	S.E. - SIDEWALK EASEMENT
M - MEASURED DISTANCE	L.E. - LANDSCAPE EASEMENT
C - CALCULATED	D.E. - DRAINAGE EASEMENT
U.R. - UTILITY RISER	U.E. - UTILITY EASEMENT
P.O.L. - POINT ON LINE	
A/C - AIR CONDITIONER	
NVD - NATIONAL GEODETIC VERTICAL DATUM	
P.A.E. - PRIVATE ALLEY EASEMENT	
PCP - PERMANENT CONTROL POINT	
PRM - PERMANENT REFERENCE MONUMENT	
PC - POINT OF COMPOUND CURVATURE	
CATV - UNDERGROUND CABLE RISER	

SITE PLAN DRAWN BY:
 SHEILA CICHRA
 OCTOBER 31, 2019

I CERTIFY THAT THIS MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS CHAPTER SIXTY-6, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO ARTICLE 12, PART 1, FLORIDA STATUTES.

CERTIFIED FOR ASSOCIATED LAND SURVEYING & MAPPING, INC.

XXXXXXXXXXXX

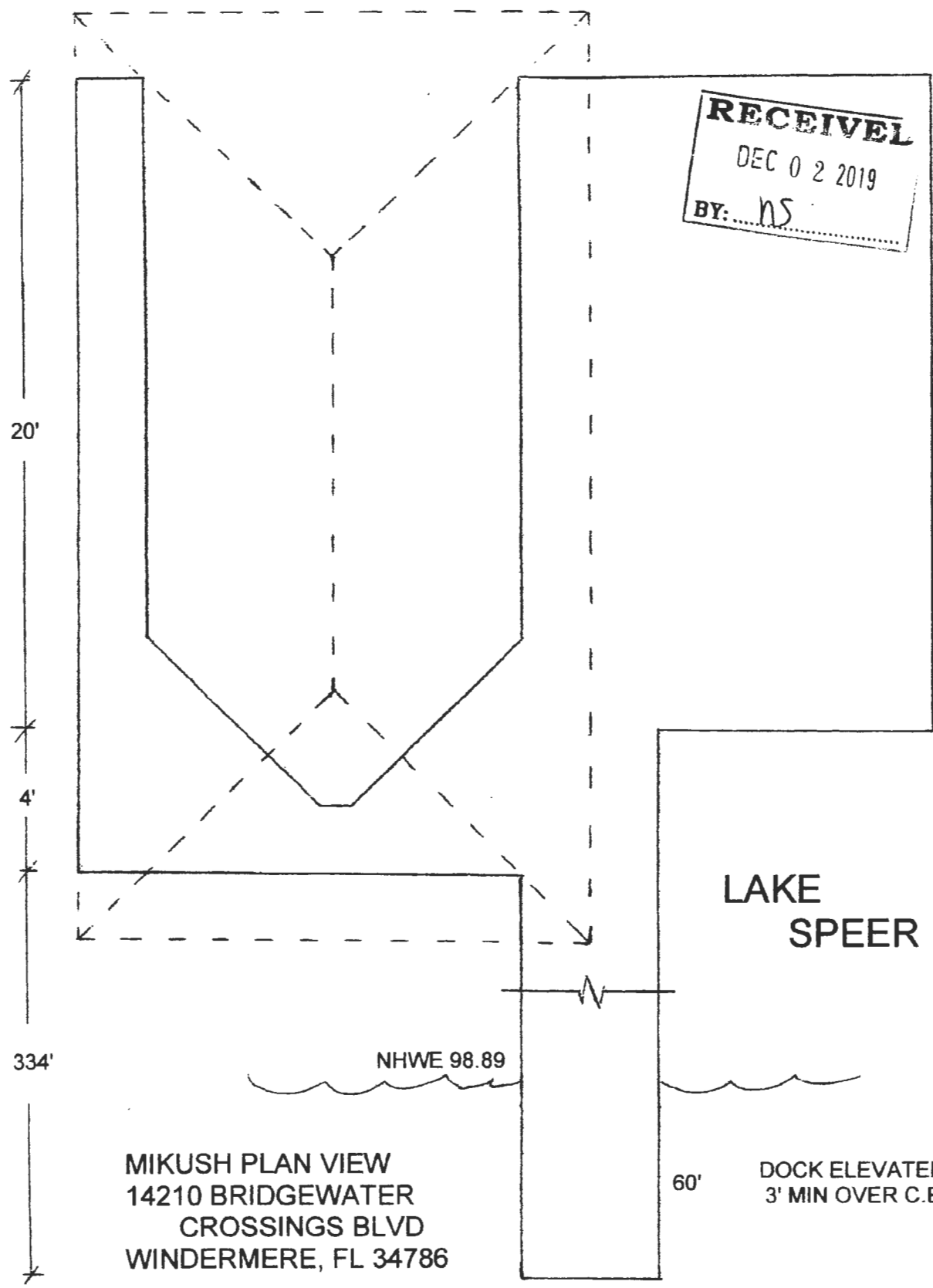
DAVID H. WILDMAN, CERTIFICATE No. 4778
 JACK D. BEED, JR., CERTIFICATE No. 5737
 FLORIDA REGISTERED SURVEYORS AND MAPPERS

Ryland Homes

PREPARED BY
Associated Land Surveying & Mapping, Inc.
 101 WYMORE ROAD, SUITE 110
 ALTAMONTE SPRINGS, FLORIDA 32714
 PHONE: (407) 869-5002-FAX: (407) 869-8393
 Certificate of Authorization Number: LB 6767 EMAIL: atam@alam.net

BOUNDARY SURVEY	1-18-2007
FORWARD LOCATION	1-25-2007
FOUNDATION	
FINAL BOUNDARY SURVEY	
SCALE: 1" = 40'	JOB NO. 05008

2' 11' 4' 8'

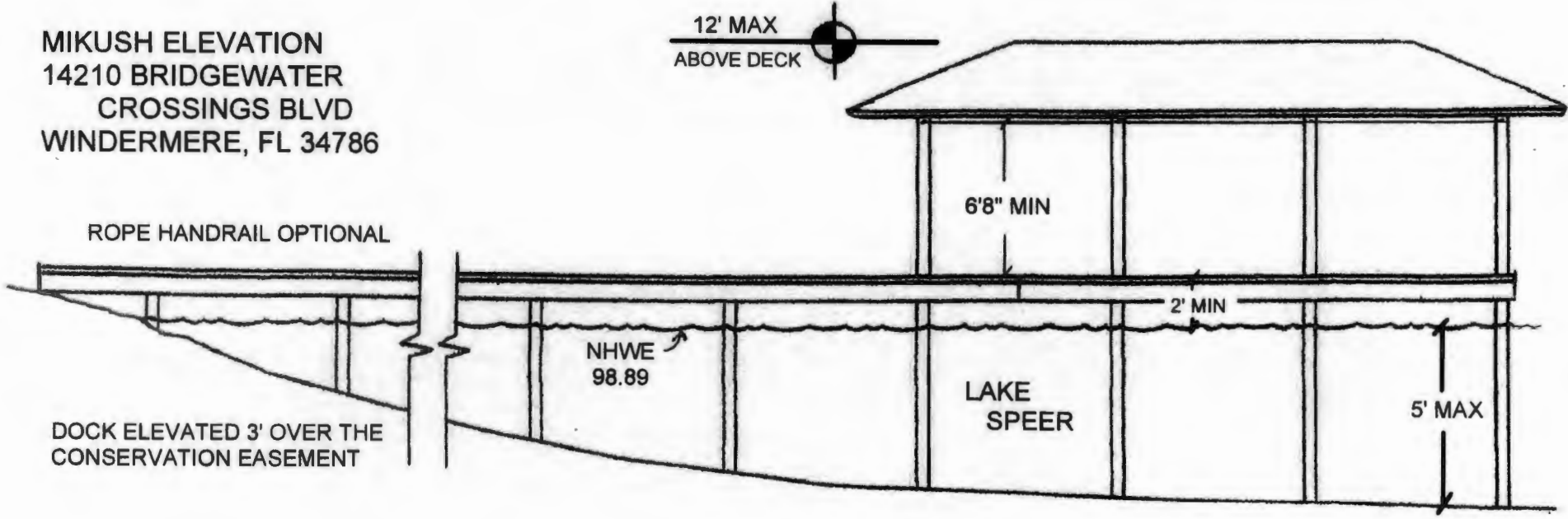


MIKUSH PLAN VIEW
 14210 BRIDGEWATER
 CROSSINGS BLVD
 WINDERMERE, FL 34786

RECEIVED
DEC 02 2019
BY: *KS*

MIKUSH ELEVATION
14210 BRIDGEWATER
CROSSINGS BLVD
WINDERMERE, FL 34786

12' MAX
ABOVE DECK



DOCK ELEVATED 3' OVER THE
CONSERVATION EASEMENT

ROPE HANDRAIL OPTIONAL

NHWE
98.89

6'8" MIN

2' MIN

LAKE
SPEER

5' MAX